

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RED TREE INVESTMENTS, LLC,

Plaintiff,

v.

PETRÓLEOS DE VENEZUELA, S.A. and
PDVSA PETRÓLEO, S.A.,

Defendants.

Nos. 22 Misc. 68 & 22 Misc. 69

JOINT STATUS REPORT

Pursuant to the Court’s September 29, 2022 order directing the parties to confer and submit a joint status report, each party’s position as to how these matters should proceed is set forth below. *See* Dkt. 17/17.¹

Red Tree’s Position

In April 2022, this Court issued an order authorizing a conditional writ of attachment *fieri facias* for Red Tree against PDVSA’s interest in the PDVH shares. Dkt. 15/15. In that order, the Court directed the Clerk to sign and issue the writ upon the Court’s receipt of evidence that OFAC has either (a) authorized the issuance and service of a writ of attachment or (b) removed the sanctions that currently apply to the PDVH shares. *Id.* In May 2022, the Court certified two questions for interlocutory review relating to those attachments and other attachments authorized in related cases. *See* Dkt. 16/16. PDVSA then filed petitions for review with the Third Circuit,

¹ In this letter, Red Tree cites filings from the two dockets as “Dkt. #/#,” where the first docket number refers to the docket entry in No. 22 Misc. 68 and the second docket number refers to the docket entry in No. 22 Misc. 69.

which denied those petitions in July 2022. Order, *Crystalex Int'l Corp v. Bolivarian Republic of Venezuela, et al.*, No. 22-8024 (3rd Cir. July 26, 2022), Dkt. 28.

Together with Crystalex and ConocoPhillips, Red Tree is only one of three creditors which currently hold an attachment (including a conditional attachment) on the PDVH shares. See *OI Eur. Grp. B.V. v. Bolivarian Republic of Venezuela*, No. 19 Misc. 290, 2022 WL 611563, at *9 (D. Del. Mar. 2, 2022) (granting ConocoPhillips a conditional attachment); *Crystalex Int'l Corp. v. Bolivarian Republic of Venezuela*, 333 F. Supp. 3d 380, 426 (D. Del. 2018), aff'd, 932 F.3d 126 (3d Cir. 2019) (granting Crystalex an attachment). Red Tree has thus engaged, and will continue to engage, with the Special Master to explore Red Tree's potential interest in participating in the PDVH sales process.

Red Tree also believes that the Court should soon consider taking additional steps to protect recognized judgment creditors and to work towards an efficient and productive sale. Such steps may include (but need not be limited to) ordering proceeds from the sale of the PDVH shares to be escrowed in an amount sufficient to satisfy the judgments of creditors with attachments on those shares. In addition, Red Tree understands that the Court will soon sign a sales procedure order which will, among other things, authorize the Special Master to "proactively engage" with OFAC and other Executive Branch officials within a six-month "trigger window" to seek guidance and authorization about the sale of the PDVH shares. See No. 17 Misc. 151, Dkt. 541-1, at 11; see also No. 17 Misc. 151, Dkt. 479. Red Tree believes that, if authorization from OFAC is not forthcoming within the six-month "trigger window," the Court should consider other ways to protect stakeholders' rights. Red Tree welcomes the opportunity to further address these issues and others with the Court.

PDVSA’s Position

Contrary to Red Tree’s assertion, Red Tree does not “hold an attachment . . . on the PDVH shares.” Instead, the Court has simply issued an order authorizing the eventual issuance and service of a writ of attachment in the event that at some future date Red Tree obtains a specific license from OFAC or there is a material modification to the OFAC sanctions regime. *See D.I. 15.* Unless and until these hypothetical events occur, Red Tree has no rights or interests in the PDVH shares, nor can it under the current OFAC sanctions regime, as this Court has held in the decision in a related case forming the basis for issuance of the order here. *See OI Eur. Grp. B.V. v. Bolivarian Republic of Venezuela*, Misc. No. 19-mc-290-LPS, D.I. 109 at 14 (holding, over PDVSA’s objection, that entry of an order authorizing the eventual issuance of a writ of attachment conditioned on OFAC’s grant of a specific license did not amount to a prohibited “transfer,” reasoning that “[t]he requested relief will not establish priority in the PDVH shares” and “would not affect rights in blocked property until that property is no longer blocked”); *id.* at 22 n.17 (holding that the similarly situated ConocoPhillips cannot “establish[] a concrete interest in the PDVH Shares . . . until [it] obtains a specific license from OFAC or the sanctions regime materially changes”). Accordingly, Red Tree has no right to participate in, or make suggestions to the Court concerning, the *Crystallex* sale process.

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